

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2326

THIS DOCUMENT RELATES TO

Nina Smith, et al. v. Boston Scientific Corporation
Civil Action No. 2:13-cv-19778

MEMORANDUM OPINION & ORDER

Pending before the court is the Defendant's Motion to Dismiss with Prejudice [ECF No. 12] filed by Boston Scientific Corporation ("BSC"). BSC seeks dismissal of the case with prejudice based on the plaintiffs' failure to provide a completed Plaintiff Fact Sheet in accordance with Pretrial Order # 175 [ECF No. 10].

The Certificate of Service attached to BSC's Motion, which is signed by counsel for BSC, states the following:

I hereby certify that on April 13, 2018, I electronically filed the foregoing with the Clerk using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in the member cases.

Def.'s Mot. to Dismiss with Prejudice 3. As stated in the Certificate of Service, BSC can only certify delivery of the Motion to those parties that have registered to receive service through the CM/ECF system. Here, according to the record in this case, the plaintiffs have not registered to receive service by electronic means. *See* Fed. R. Civ.

P. 5(b)(2)(E) (stating that service by electronic means is permissible only when the person to be served consents in writing).

Before the court can address the merits of the Motion, BSC must certify that it has served these documents on the plaintiffs appropriately. *See* Fed. R. Civ. P. 5(a)(1) (requiring pleadings filed after the original complaint to be served on every party); Fed. R. Civ. P. 5(d)(1) (“Any paper . . . that is required to be served—together with a certificate of service” must be filed “within a reasonable time after service.”).

Therefore, the court **ORDERS** that the Motion to Dismiss with Prejudice is **DENIED without prejudice**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: May 7, 2018



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE